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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 985

**Introduced by Assembly Member De La Torre
(Coauthor: Assembly Member Krekorian)**

February 27, 2009

An act to amend Sections 12956.1, 12956.2, and 27361 of, and to add Article 3.6 (commencing with Section 27310) to Chapter 6 of Part 3 of Division 2 of Title 3 of, the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, De La Torre. Real property: discriminatory restrictions.

(1) Existing law prohibits discrimination in housing through restrictive covenants based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.

Existing law similarly declares that any provision in any deed of real property in California that purports to restrict the right of any person to sell, lease, rent, use, or occupy the property to persons having any specified characteristic, including, but not limited to, race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, source of income, or sexual orientation, by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void, except as specified.

Existing law provides that any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any of the above-specified characteristics, shall be deemed to be revised to omit that provision.

Existing law also authorizes a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry, to record a Restrictive Covenant Modification, which would include a copy of the original document with the illegal language stricken. Before recording the modification document, the county recorder is required to submit the modification document and the original document to the county counsel who is required to determine whether the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. The county recorder is required to make Restrictive Covenant Modification forms available to the public. Under existing law, a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person is required to place a cover page or stamp on the previously recorded document stating that if the document contains an unlawful restriction, that restriction is void and may be removed by recording a Restrictive Covenant Modification.

This bill would require a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to

a person who holds an ownership interest of record in property to also provide a Restrictive Covenant Modification form with specified procedural information to that person. The bill would authorize a title insurance company, escrow company, real estate broker, real estate agent, or other person to record a Restrictive Covenant Modification, in addition to the owner of record, and would require the requester to provide a return address in order for the county recorder to notify the interested party of the action taken by county counsel on the respective property. The bill would require the county counsel to make its determination whether *the language identified by the requester in the original document* contains an unlawful restriction within a reasonable period of time, not to exceed 3 months, as specified, and would authorize the county counsel to compile a list of phrases identified as unlawfully restrictive language for the purpose of expediting that determination. The bill would require the county recorder to make Restrictive Covenant Modification forms available to the public onsite in an appropriately designated area, and would permit multiple submissions on behalf of different homes and for processing homes in batches with respect to a modification document that affects multiple homes or lots. These new duties would impose a state-mandated local program on the county recorder and county counsel.

(2) Existing law requires the recorder of each county to establish a social security number truncation program in order to create a public record version of each official record so that the public record is in an electronic format and is an exact copy of the official record, except that any social security number contained in the official record shall be truncated by redacting the first 5 digits of that number. These provisions apply to any document recorded since January 1, 1980, as specified. If a public record version of an official record exists, and upon a request of any person to inspect, copy, or to otherwise publicly disclose that record, the recorder shall make available only the public record version of that record, and publicly disclose the official record only in response to a subpoena or court order. The county recorder may, upon authorization of the board of supervisors, charge an additional fee of \$1 for recording the first page of each document to be used to implement a social security number truncation program pursuant to these provisions. The county auditor is required, at the request of the county board of supervisors, to verify that these fees are used only for the purpose of the program.

This bill would require the recorder of each county to create a public record version of each official record for which a restrictive covenant modification is recorded on or after January 1, 2010, so that the public record is in an electronic format and is an exact copy of the official record, except that any unlawfully restrictive covenant contained in the official record shall be redacted. ~~The bill would require the county recorder also to convert the official record into an electronic format at that time. The bill would specify that an electronic version of the unredacted record, for which a Restrictive Covenant Modification is recorded, would become the official record for the purposes of these provisions.~~ If a public record version of an official record exists, and upon request of any person to inspect, copy, or to otherwise publicly disclose that record, the recorder shall make available only the public record version of that record, and publicly disclose the official record only in response to a subpoena or court order. The bill would provide that the county recorder shall not incur any liability for a procedural, clerical, or administrative error in the recording of a modification document or any other activity related to the redaction of an unlawfully restrictive covenant pursuant to these provisions. The bill would also exempt the county counsel from liability, as specified. The bill would ~~authorize~~ *require* the county recorder to charge ~~a reasonable fee an initial fee of not more than \$2,~~ as specified, for recording the first page of each *property-related* document to be used by the county for the sole purpose of performing activities related to the redaction of an unlawfully restrictive covenant pursuant to these provisions or those described in (1) above. ~~The bill would require the county recorder to review and recalculate the fee periodically, as specified, to determine the amount reasonably necessary to recover actual~~ *board of supervisors to adjust the fee to a whole dollar amount reasonably sufficient to recover costs.* By creating new duties for county recorders, this bill would impose a state-mandated local program.

(3) This bill would make legislative findings that any limitation on the public's right of access to the writings of public officials and agencies made by its provisions is necessary to protect against the risk of discrimination.

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~

reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12956.1 of the Government Code is
2 amended to read:
3 12956.1. (a) As used in this section, “association,” “governing
4 documents,” and “declaration” have the same meanings as set forth
5 in Section 1351 of the Civil Code.
6 (b) (1) A county recorder, title insurance company, escrow
7 company, real estate broker, real estate agent, or association that
8 provides a copy of a declaration, governing document, or deed to
9 any person shall place a cover page or stamp on the first page of
10 the previously recorded document or documents stating, in at least
11 14-point boldface type, the following:
12
13 “If this document contains any restriction based on race, color,
14 religion, sex, sexual orientation, familial status, marital status,
15 disability, national origin, source of income as defined in
16 subdivision (p) of Section 12955, or ancestry, that restriction
17 violates state and federal fair housing laws and is void, and may
18 be removed pursuant to Section 12956.2 of the Government Code.
19 Lawful restrictions under state and federal law on the age of
20 occupants in senior housing or housing for older persons shall not
21 be construed as restrictions based on familial status.”
22
23 (2) The requirements set forth in paragraph (1) shall not apply
24 to documents being submitted for recordation to a county recorder.

(3) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed directly to a person who holds an ownership interest of record in property shall also provide a Restrictive Covenant Modification form with procedural information, as defined subdivision (b) of Section 27310, along with the document.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

SEC. 2. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. A title insurance company, escrow company, real estate broker, real estate agent, or other person also may record the modification document provided for in this section. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether *the language identified by the requester in the original document* contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination within a reasonable period of time, not to exceed three months unless extraordinary circumstances apply. The county recorder shall refuse

1 to record the modification document if the county counsel finds
2 that the original document does not contain an unlawful restriction
3 as specified in this subdivision. For the purpose of expediting the
4 determination required pursuant to this subdivision, the county
5 counsel may compile a list of phrases identified as unlawfully
6 restrictive language.

7 (c) If a title insurance company, escrow agent, realtor, or other
8 person requests to record a modification document, the requester
9 shall provide a return address in order for the county recorder to
10 notify the interested party of the action taken by county counsel
11 on the respective property. The notice required pursuant to this
12 subdivision may be made on a postcard mailed by first-class mail.

13 (d) The modification document shall be indexed in the same
14 manner as the original document being modified. It shall contain
15 a recording reference to the original document in the form of a
16 book and page or instrument number, and date of the recording.

17 (e) Subject to covenants, conditions, and restrictions that were
18 recorded after the recording of the original document that contains
19 the unlawfully restrictive language and subject to covenants,
20 conditions, and restrictions that will be recorded after the
21 Restrictive Covenant Modification, the restrictions in the
22 Restrictive Covenant Modification, once recorded, are the only
23 restrictions having effect on the property. The effective date of the
24 terms and conditions of the modification document shall be the
25 same as the effective date of the original document.

26 (f) The county recorder shall make available to the public
27 Restrictive Covenant Modification forms onsite in an appropriately
28 designated area, which shall be deemed to satisfy the requirement
29 of ~~paragraph (1)~~ *paragraphs (1) and (2)* of subdivision (b) of
30 Section 12956.1 to provide a Restrictive Covenant Modification
31 form if the specified procedural information for completion is
32 attached to the form. Those forms shall permit multiple submissions
33 on behalf of different homes and for processing homes in batches
34 with respect to a modification document that affects multiple homes
35 or lots.

36 (g) If the holder of an ownership interest of record in property
37 or a third party causes to be recorded a modified document pursuant
38 to this section that contains modifications not authorized by this
39 section, the county recorder shall not incur liability for recording
40 the document. The liability that may result from the unauthorized

1 recordation is the sole responsibility of the holder of the ownership
2 interest of record or third party who caused the modified
3 recordation.

4 (h) This section does not apply to persons holding an ownership
5 interest in property that is part of a common interest development
6 as defined in subdivision (c) of Section 1351 of the Civil Code if
7 the board of directors of that common interest development is
8 subject to the requirements of subdivision (b) of Section 1352.5
9 of the Civil Code.

10 SEC. 3. Article 3.6 (commencing with Section 27310) is added
11 to Chapter 6 of Part 3 of Division 2 of Title 3 of the Government
12 Code, to read:

13
14 Article 3.6. Unlawfully Restrictive Covenant Redaction

15
16 27310. As used in this article, the following terms have the
17 following meanings:

18 (a) "Official record" means the permanent archival record of
19 all instruments, papers, and notices as accepted for recording by
20 a county recorder.

21 (b) "Procedural information," as it relates to a Restrictive
22 Covenant Modification, means the description of how to locate
23 potentially unlawful restrictive covenants and how to submit the
24 Restrictive Covenant Modification document to the county recorder
25 for appropriate processing. This description may, but is not required
26 to, use the following language:

27
28 Some archived property documents may contain offensive, illegal
29 language that purports to restrict ownership or occupancy of
30 property. These restrictions are illegal, and have no effect on
31 anyone's ability to own or occupy the property, but may still appear
32 in property documents as an unlawful restrictive covenant.

33 Sometimes these illegal restrictions appear only in archived
34 documents and may be found only by a review of those documents
35 at the office of the county recorder. You may search those
36 documents for free at the office of the county recorder, which is
37 open to the public. If you discover an illegal restriction, you may
38 obtain a Restrictive Covenant Modification form from the office
39 of the county recorder to request the removal of the illegal
40 restriction. *You must submit a modification document that includes*

1 *a complete copy of the original document containing the unlawfully*
 2 *restrictive language with the unlawfully restrictive language*
 3 *stricken.*

4 After you complete the form and submit it to the office of the
 5 county recorder, the county counsel will make a legal determination
 6 whether the language is indeed unlawful and should be removed.
 7 If an illegal restriction is found to exist, state law contains a
 8 procedure for the creation of a replacement document that does
 9 not contain the offensive language. This procedure may be used
 10 to remove illegal restrictions from a declaration, governing
 11 document, or deed, even if you are not the owner.

12
 13 (c) “Public record” means a record that is in an electronic format
 14 and is an exact copy of an official record except that any unlawfully
 15 restrictive covenant contained in the copied record is redacted and
 16 any social security number contained in the copied record is
 17 truncated pursuant to Article 3.5 (commencing with Section
 18 27300). The public record shall have the same legal force and
 19 effect as the official record.

20 (d) “Unlawfully restrictive covenant” means any written
 21 covenant, condition, or restriction annexed or made a part of, by
 22 reference or otherwise, a deed or other instrument in violation of
 23 subdivision (l) of Section 12955.

24 27311. (a) The county recorder of each county shall create a
 25 public record version of each official record for which a Restrictive
 26 Covenant Modification is recorded pursuant to Section 12956.2
 27 on or after January 1, 2010. The public record shall be in an
 28 electronic format and an exact copy of the official record, except
 29 that any unlawfully restrictive covenant contained in the official
 30 record shall be redacted. ~~The official record also shall be converted~~
 31 ~~into an electronic format at that time.~~ *An electronic version of the*
 32 *unredacted record, for which a Restrictive Covenant Modification*
 33 *is recorded, shall become the official record for purposes of this*
 34 *section.*

35 (b) Nothing in this article shall be construed to restrict, delay,
 36 or modify access to any official record, or modify any existing
 37 agreements regarding access to any official record, prior to the
 38 creation and availability of a public record version of that official
 39 record. A county recorder shall not charge any new fee or increase
 40 any existing fees in order to fund the redaction of unlawfully

1 restrictive covenants pursuant to this article, except as provided
2 in subdivision (e) of Section 27361.

3 (c) The county recorder shall not incur any liability for a
4 procedural, clerical, or administrative error in the recording of a
5 modification document or any other activity related to the redaction
6 of an unlawfully restrictive covenant pursuant to this article.

7 27313. If a public record version of an official record exists,
8 both of the following shall apply:

9 (a) Upon a request for inspection, copying, or any other public
10 disclosure of an official record that is not exempt from disclosure,
11 a county recorder shall make available only the public record
12 version of that record.

13 (b) A county recorder shall publicly disclose an official record
14 only in response to a subpoena or order of a court of competent
15 jurisdiction.

16 27314. (a) Each county may use funds generated by fees
17 authorized by subdivision (e) of Section 27361 to implement this
18 article.

19 (b) It is the intent of the Legislature that counties be permitted
20 to seek revenue anticipation loans or other outside funding sources
21 for the implementation of this article to be secured by the
22 anticipated revenue from the fee authorized by subdivision (e) of
23 Section 27361.

24 27317. A county recorder is authorized to take all actions
25 required by this article notwithstanding subdivision (d) of Section
26 27203 or any other provision of law.

27 27318. The county counsel shall not incur liability for the
28 failure to strike unlawfully restrictive language from a document
29 if that language was not identified on the Restrictive Covenant
30 Modification form as an illegal restriction.

31 SEC. 4. Section 27361 of the Government Code is amended
32 to read:

33 27361. (a) The fee for recording and indexing every
34 instrument, paper, or notice required or permitted by law to be
35 recorded is four dollars (\$4) for recording the first page and three
36 dollars (\$3) for each additional page, except the recorder may
37 charge additional fees as follows:

38 (1) If the printing on printed forms is spaced more than nine
39 lines per vertical inch or more than 22 characters and spaces per
40 inch measured horizontally for not less than three inches in one

1 sentence, the recorder shall charge one dollar (\$1) extra for each
2 page or sheet on which printing appears, except, however, the extra
3 charge shall not apply to printed words which are directive or
4 explanatory in nature for completion of the form or on vital
5 statistics forms. Fees collected under this paragraph are not subject
6 to subdivision (b) or (c).

7 (2) If a page or sheet does not conform with the dimensions
8 described in subdivision (a) of Section 27361.5, the recorder shall
9 charge three dollars (\$3) extra per page or sheet of the document.
10 The funds generated by the extra charge authorized under this
11 paragraph shall be available solely to support, maintain, improve,
12 and provide for the full operation for modernized creation,
13 retention, and retrieval of information in each county's system of
14 recorded documents. Fees collected under this paragraph are not
15 subject to subdivision (b) or (c).

16 (b) One dollar (\$1) of each three dollar (\$3) fee for each
17 additional page shall be deposited in the county general fund. This
18 subdivision does not apply to the fee described in subdivision (e).

19 (c) Notwithstanding Section 68085, one dollar (\$1) for recording
20 the first page and one dollar (\$1) for each additional page shall be
21 available solely to support, maintain, improve, and provide for the
22 full operation for modernized creation, retention, and retrieval of
23 information in each county's system of recorded documents.

24 (d) (1) In addition to all other fees authorized by this section,
25 a county recorder may charge a fee of one dollar (\$1) for recording
26 the first page of every instrument, paper, or notice required or
27 permitted by law to be recorded, as authorized by each county's
28 board of supervisors. The funds generated by this fee shall be used
29 only by the county recorder collecting the fee for the purpose of
30 implementing a social security number truncation program pursuant
31 to Article 3.5 (commencing with Section 27300).

32 (2) A county recorder shall not charge the fee described in
33 paragraph (1) after December 31, 2017, unless the county recorder
34 has received reauthorization by the county's board of supervisors.
35 A county recorder shall not seek reauthorization of the fee by the
36 board before June 1, 2017, or after December 31, 2017. In
37 determining the additional period of authorization, the board shall
38 consider the review described in paragraph (4).

39 (3) Notwithstanding paragraph (2), a county recorder who,
40 pursuant to subdivision (c) of Section 27304, secures a revenue

1 anticipation loan, or other outside source of funding, for the
2 implementation of a social security number truncation program,
3 may be authorized to charge the fee described in paragraph (1) for
4 a period not to exceed the term of repayment of the loan or other
5 outside source of funding.

6 (4) A county board of supervisors that authorizes the fee
7 described in this subdivision shall require the county auditor to
8 conduct two reviews to verify that the funds generated by this fee
9 are used only for the purpose of the program, as described in Article
10 3.5 (commencing with Section 27300) and for conducting these
11 reviews. The reviews shall state the progress of the county recorder
12 in truncating recorded documents pursuant to subdivision (a) of
13 Section 27301, and shall estimate any ongoing costs to the county
14 recorder of complying with subdivisions (a) and (b) of Section
15 27301. The board shall require that the first review be completed
16 not before June 1, 2012, or after December 31, 2013, and that the
17 second review be completed not before June 1, 2017, or after
18 December 31, 2017. The reviews shall adhere to generally accepted
19 accounting standards, and the review results shall be made available
20 to the public.

21 ~~(e) (1) In addition to all other fees authorized by this section,~~
22 ~~a county recorder may charge a fee in an amount reasonably~~
23 ~~necessary to recover actual costs of administration, for recording~~
24 ~~the first page of every instrument, paper, or notice required or~~
25 ~~permitted by law to be recorded. The funds generated by this fee~~
26 ~~shall be used only by the county collecting the fee for the sole~~
27 ~~purpose of performing activities related to the redaction of an~~
28 ~~unlawfully restrictive covenant pursuant to Sections 12956.1 and~~
29 ~~12956.2, and Article 3.6 (commencing with Section 27310).~~

30 ~~(2) The fee described in paragraph (1) shall be reviewed and~~
31 ~~recalculated every year for at least the first five years by the county~~
32 ~~recorder in order to determine the amount reasonably necessary~~
33 ~~to recover actual costs. After the first five years, the county recorder~~
34 ~~may thereafter review and recalculate the fee as necessary to~~
35 ~~determine the amount reasonably necessary to recover actual costs.~~

36 ~~(3) Except as otherwise provided in subdivision (d) of Section~~
37 ~~27311, the county recorder shall fulfill the requirements of Sections~~
38 ~~12956.1 and 12956.2, and Article 3.6 (commencing with Section~~
39 ~~27310) to the same extent that would have been required had the~~
40 ~~fee been implemented.~~

(e) (1) *In addition to all other fees authorized by this section, for recording the first page of every property related instrument, paper, or notice required or permitted by law to be recorded, a county recorder shall charge an initial fee of not more than two dollars (\$2) and the board of supervisors shall adjust the fee to a whole dollar amount reasonably sufficient to recover costs for performing activities related to the redaction of an unlawfully restrictive covenant pursuant to Sections 12956.1 and 12956.2, and Article 3.6 (commencing with Section 27310). The funds generated by this fee shall be used only by the county collecting the fee for the sole purpose of performing activities related to the redaction of an unlawfully restrictive covenant pursuant to Sections 12956.1 and 12956.2, and Article 3.6 (commencing with Section 27310).*

~~(4)~~

(2) The fee described in paragraph (1) may be included in an extended multiyear funding plan if that plan also sets forth the funds allocated to the county recorder for equipment and training in order to implement the requirements of Article 3.6. Pursuant to that plan, the fee may be allocated over more than one year.

~~(5)~~

(3) If any person disputes whether a fee levied pursuant to paragraph (1) is reasonable, the board of supervisors may request the county auditor to conduct a study to determine whether the fee is reasonable.

~~(6)~~

(4) Nothing in this subdivision shall be construed to mean that the county shall not continue to be subject to fee review procedures required by Article XIII B of the California Constitution.

SEC. 5. The Legislature finds and declares that Section 3 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect against the risk of discrimination when government documents maintained by county recorders contain unlawfully restrictive covenants, it is necessary to enact legislation

1 that minimizes the existence of unlawfully restrictive covenants
2 in those government documents.

3 ~~SEC. 6. If the Commission on State Mandates determines that~~
4 ~~this act contains costs mandated by the state, reimbursement to~~
5 ~~local agencies and school districts for those costs shall be made~~
6 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
7 ~~4 of Title 2 of the Government Code.~~

8 *SEC. 6. The Legislature finds that there is no mandate*
9 *contained in this act that will result in costs incurred by a local*
10 *agency or school district for a new program or higher level of*
11 *service which require reimbursement pursuant to Section 6 of*
12 *Article XIII B of the California Constitution and Part 7*
13 *(commencing with Section 17500) of Division 4 of Title 2 of the*
14 *Government Code.*